

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>ISAIAH CAPITOL,</b>	)	
<b>Petitioner,</b>	)	<b>C.A. No. 23-165 Erie</b>
	)	
<b>v.</b>	)	<b>District Judge Susan Paradise Baxter</b>
	)	<b>Chief Magistrate Judge Richard Lanzillo</b>
<b>WARDEN OF SCI-MERCER,</b>	)	
<b>Respondent.</b>	)	

**MEMORANDUM ORDER**

This *pro se* action for habeas corpus relief was filed by Petitioner Isaiah Capital, an inmate incarcerated at the State Correctional Institution at Mercer, Pennsylvania (“SCI-Mercer”), who is serving a sentence of imprisonment imposed by the Court of Common Pleas of Erie County, Pennsylvania. In his habeas petition, Petitioner seeks relief under 28 U.S.C. § 2254, challenging his judgment of sentence. The petition was referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The record indicates that Petitioner was convicted of two counts of Robbery, Theft by Unlawful Taking, Receiving Stolen Property, and Terroristic Threats, and was subsequently sentenced to serve an aggregate term of 11 to 22 years’ imprisonment on July 15, 2005.

On February 9, 2009, Petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in this Court, challenging his conviction based on ineffectiveness of trial counsel, prosecutorial misconduct, and illegality of sentence. See Capitol v. Nish, Case No. 1:09-cv-16 (W.D. Pa. 2009). On October 12, 2011, United States District Judge Sean J. McLaughlin denied Petitioner’s habeas petition and dismissed the action.

Petitioner filed the instant habeas petition on June 7, 2023, over eleven years after the dismissal of his prior habeas petition, challenging the same judgment of sentence, without having first sought or received authorization to pursue a second or successive habeas petition from the Third Circuit Court of Appeals. As a result, on October 26, 2023, Respondent filed a motion to dismiss the petition as an unauthorized second or successive petition, pursuant to 28 U.S.C. §2244(b). [ECF No. 9].

On January 12, 2024, Chief Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) recommending that Respondent’s motion to dismiss be granted, that the instant petition be denied, and that a Certificate of Appealability be denied, without prejudice to Petitioner’s right to seek authorization to file a second or successive petition from the Court of Appeals for the Third Circuit. [ECF No. 15]. Objections to the R&R were due to be filed by January 29, 2024; however no timely objections have been received by the Court.

After *de novo* review of the petition and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 7th day of February, 2024;

IT IS HEREBY ORDERED that Respondent’s motion to dismiss [ECF No. 9] is GRANTED, the within petition for a writ of habeas corpus is DENIED, and that a Certificate of Appealability is also DENIED, without prejudice to Petitioner’s right to seek authorization to file a second or successive petition from the Court of Appeals for the Third Circuit, if he so desires. In the event Petitioner is able to receive such authorization, he will then have the right to file a new petition with this Court at a new docket number. The report and recommendation of Chief Magistrate Judge Lanzillo, dated January 12, 2024 [ECF No. 15], is adopted as the opinion of

this Court. As there are no further matters pending before the Court relative to the instant petition, the Clerk is directed to mark this case "CLOSED."

A handwritten signature in black ink, reading "Susan Paradise Baxter". The signature is fluid and cursive, with the first name "Susan" being the most prominent.

SUSAN PARADISE BAXTER  
United States District Judge

cc: The Honorable Richard A. Lanzillo  
Chief United States Magistrate Judge

All parties of record